

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION 02-0993-WS-L
)	
SILVER SEAFOOD, INC., et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on the Suggestion of Bankruptcy (doc. 20) and Amended Suggestion of Bankruptcy (doc. 22) filed by bankruptcy counsel for defendants Ray P. Khemmanivanh and Thongkham Khemmanivanh (collectively, the “Khemmanivanhs”). These filings relate that on June 2, 2003, the Khemmanivanhs filed a Chapter 7 bankruptcy petition in the U.S. Bankruptcy Court for the Southern District of Alabama, and that such petition lists the Government as a creditor. The Khemmanivanhs request that the Court “enter an ORDER TO STAY all further action in this cause” (Suggestion of Bankruptcy) and “for any other such relief in [sic] which they may be entitled” (Amended Suggestion of Bankruptcy). Neither defendant Silver Seafood, Inc. nor Kham Seafood Company (the name under which Silver Seafood, Inc. does business) is a petitioner in the bankruptcy proceeding.

On June 11, 2003, the Court entered an Order construing the Suggestion of Bankruptcy as a Motion to Stay and outlining a briefing schedule regarding same. On June 20, 2003, the Government submitted its opposition to the Motion. To date, neither the Khemmanivanhs nor their bankruptcy counsel has submitted any argument or authorities supporting their request for a stay.

Once a debtor files a Chapter 7 petition in the Bankruptcy Court, that filing triggers the Bankruptcy Code’s automatic stay provision, which generally provides that the filing of such a petition operates as a stay of “the commencement or continuation ... of a judicial, administrative or other action

or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title” 11 U.S.C. § 362(a)(1). However, § 362(b) of the Bankruptcy Code carves out several exceptions to the automatic stay requirement. The critical exception implicated by the Motion provides that the filing of a petition does not operate as a stay “of the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit’s ... police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce [its] ... police or regulatory power.” 11 U.S.C. § 362(b)(4).¹ Thus, the applicability of the stay turns on whether this action is properly characterized as one by a government unit to enforce its police or regulatory power.

The Complaint reflects that, in bringing this action, the Government seeks to enjoin defendants from alleged violations of the Food, Drug and Cosmetic Act (the “Act”), 21 U.S.C. §§ 301, *et seq.*²

¹ The purpose of this exception was to enable the Government “to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws,” notwithstanding the violator’s bankruptcy status. Brock v. Rusco Industries, Inc., 842 F.2d 270, 273 (11th Cir. 1988); N.L.R.B. v. Evans Plumbing Co., 639 F.2d 291, 293 (5th Cir. 1981); see also In re. Seminole Entertainment, Inc., Case No. 01-00521-6B1, 2001 Bankr. LEXIS 2049 (Bankr. M.D. Fla. Jan. 30, 2001) (noting that the term “police or regulatory power” refers to enforcement of laws affecting health, welfare, morals and safety). As the Eleventh Circuit has recognized, the United States must be able to enforce consumer protection and safety laws uniformly without regard to a debtor’s position in bankruptcy. Brock, 842 F.2d at 273. “The Bankruptcy Court is not a haven for wrongdoers,” nor is it a “cheap and easy sanctuary from ... all federal regulatory proceedings.” Donovan v. TMC Industries, Ltd., 20 B.R. 997, 1001 (N.D. Ga. 1982).

² This objective is clearly evinced by Paragraph 1 of the “Complaint for Injunction,” which provides that:

“This proceeding is brought under the Federal Food, Drug, and Cosmetic Act (“Act”), 21 U.S.C. § 332(a), ***to enjoin defendants*** Silver Seafood, Inc. (doing business as Kham Seafood Company), Ray P. Khemmanivanh, and Thong Kham Khemmanivanh, ***from violating 21 U.S.C. § 331(k) by causing articles of food to become adulterated***, within the meaning of 21 U.S.C. § 342(a)(4), while such articles are held for sale after shipment in interstate commerce.”

(Complaint, at ¶ 1 (emphasis added).)

In particular, the Government alleges that defendants “adulterate their crabmeat products” by preparing, packing or holding them “under insanitary conditions whereby [they] may have become contaminated with filth or rendered injurious to health.” (Complaint, ¶ 8.) The Complaint further documents a litany of alleged violations in the defendants’ food processing practices, such as dead flies in the water used to cook crabs, ceiling condensation dripping onto cooked crabmeat, crabmeat not being kept at proper temperatures to prevent rapid growth of pathogens during processing, and the like. (Complaint, ¶¶ 14-16.)

In the Complaint’s prayer for relief, the Government requests that defendants be permanently enjoined from causing articles of food to become adulterated, and that they be ordered to cease processing, preparing, packing, holding for sale and distributing seafood products until their operations are brought into compliance with the Act. (Prayer for Relief.) The Complaint requests no damages or other monetary relief, except for costs. (Id.)

Clearly, then, this action was brought by the Government to restrain and enjoin defendants from processing or distributing adulterated crabmeat. As such, this proceeding constitutes enforcement of laws affecting health, welfare, and safety (with no designs to obtain or enforce a money judgment), and falls squarely within the Government’s “police or regulatory power.” The Government seeks not to adjudicate private rights herein, but rather to effectuate public policy goals. See Chao v. Hospital Staffing Services, Inc., 270 F.3d 374, 385-86 (6th Cir. 2001) (finding that actions instituted to effectuate a government entity’s public policy goals are outside the scope of the automatic stay, while those to adjudicate private rights are not). This action is therefore exempt from the automatic stay under 11 U.S.C. § 362(b)(4). Case law interpreting and applying this section in a wide range of other contexts reinforces this conclusion. See, e.g., Brock v. Rusco Industries, Inc., 842 F.2d 270, 273 (11th Cir. 1988) (deeming Secretary of Labor’s suit to enjoin debtor from selling “hot goods” in violation of Fair Labor Standards Act to have been brought under police power); N.L.R.B. v. Evans Plumbing Co., 639 F.2d 291, 292-93 (5th Cir. 1981) (concluding that petition by National Labor Relations Board to require reinstatement of wrongfully discharged employees with back pay was an exercise of police or regulatory powers within the scope of the § 362(b)(4) exemption, and

distinguishing action for injunctive relief from action to secure money judgment); In re. Seminole Entertainment, Inc., Case No. 01-00521-6B1, 2001 Bankr. LEXIS 2049, *6 (Bankr. M.D. Fla. Jan. 30, 2001) (“The revocation of the debtor’s Adult Entertainment License is an exercise by the City of its police and regulatory powers and this determination is the end of the inquiry” regarding application of § 362(b)(4) exemption); In re. Selma Apparel Corp., 132 B.R. 968, 970 (S.D. Ala. 1991) (government suit under False Claims Act alleging conspiracy by debtor to defraud the government and seeking compensation for losses and imposition of a penalty on debtor was a police and regulatory action, so as to be exempt from automatic stay, even if government’s primary purpose was compensation for pecuniary loss); United States v. ILCO, Inc., 48 B.R. 1016, 1023-24 (N.D. Ala. 1985) (complaint seeking injunction ordering debtor to abate release of hazardous substances and abate endangerment to health and environment was an equitable action to prevent future harm, rather than an action to enforce a money judgment, and was therefore not subject to automatic stay); Donovan v. TMC Industries, Ltd., 20 B.R. 997, 1002 (N.D. Ga. 1982) (collecting cases and concluding that the government is authorized to proceed with a variety of regulatory or police measures, notwithstanding pendency of bankruptcy proceedings).

In light of the foregoing, the Court finds this action to lie well within the ambit of the § 362(b)(4) exemption to the automatic stay in bankruptcy. Accordingly, the Khemmanivanhs’ request for a stay of these proceedings is **denied**.

The Clerk’s Office is directed to transmit copies of this Order to counsel of record for all parties, as well as to the Khemmanivanhs’ bankruptcy counsel, Jay M. Ross, Esq., P.O. Box 210, Mobile, Alabama 36601.

DONE and ORDERED this 21st day of July, 2003.

s/ WILLIAM H. STEELE
UNITED STATES DISTRICT JUDGE